



The Republic of Korea's Compliance with International Convention on the Elimination of All Forms of Racial Discrimination

Suggested List of Themes Relating to The Death Penalty

Submitted by The Advocates for Human Rights,

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty,

and

Transitional Justice Working Group

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The Transitional Justice Working Group (TJWG) is a human rights documentation NGO established in Seoul in 2014 that aims to develop the best practices to address mass human rights violations and to realize victim-centered approach and justice in societies that are making a transition from or have yet to make a transition from armed conflict or dictatorship.

EXECUTIVE SUMMARY

1. This report examines discrimination based on national or ethnic origin on the enjoyment of the right to life and other fundamental human rights in the Republic of Korea's ("South Korea") with respect to: (1) foreign nationals sentenced to death, (2) persons expelled, returned ("refouled"), surrendered, extradited or otherwise forcibly transferred to another state or jurisdiction where there are substantial grounds for believing that they would be in danger of being subjected to the death penalty, (3) escapees from North Korea (Democratic People's Republic of Korea), and (4) refugees and asylum-seekers who are subjected to due process violations.
2. This report discusses the implementation of the death penalty as it relates to foreign nationals. Of the 59 persons currently on death row in South Korea, there are two foreign nationals: Park Gyung-soo (박경수), a Chinese national of Korean ethnicity, and Wang Liwei (왕리웨이 or 王立伟/王立偉), a Chinese national of Han Chinese ethnicity. The weak legal guarantee of consular notification and access for foreign nationals deprived of their liberty, including those accused of capital offenses, raises concerns about discriminatory treatment.
3. This report examines South Korea's non-refoulement obligations. Since 2019, there have been multiple reports involving South Korea deporting foreign nationals to countries that implement and carry out the death penalty, including North Korea and China. These cases raise concerns about discrimination based on national or ethnic origin.
4. This report considers the discriminatory treatment of escapees from North Korea based on their national origin which results in denying them: (1) the right not to be subjected to refoulement, (2) the right to be brought promptly before a judge, (3) the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful, (4) the right to legal counsel and (5) the procedural right to appeal the decisions on protection or forcible repatriation.
5. This report lastly discusses the discrimination faced by refugees and asylum seekers in South Korea that can result in grave human rights violations against them.
6. No official gender-disaggregated figures are available for death row prisoners in South Korea which prevents us from affirming that there are no women nor no gender-non conforming people on death row.¹ Globally, women are predominantly sentenced to death for murder, often committed within contexts of gender-based violence that significantly impact their mental health. Detailed information regarding intersectional discrimination, including discrimination based on gender and national or ethnic origin and intellectual or psychosocial disability of people currently on death row, is not available.

I. Foreign nationals sentenced to death

7. South Korea's progress on abolishing the death penalty has been mixed. The Government has not carried out an execution since 1997, making South Korea a *de facto* abolitionist

¹ The World Coalition Against the Death Penalty, *Mapping of Women on Death Row*, June 2023, p.9

State. There is also a case pending before the Constitutional Court, originally filed in 2019, challenging the constitutionality of the death penalty (case no. 2019 Hun-Ba 59), but as of January 2025, no ruling has been made. This is the third case before the Constitutional Court which twice upheld the constitutionality of the death penalty by a 7-2 vote on 28 November 1998 (case no. 95 Hun-Ba 1) and by a 5-4 vote on 25 February 2010 (case no. 2008 Hun-Ga 23). The affirmative vote of at least six out of the nine justices is required to rule a statute unconstitutional. Recent changes in the composition of the Constitutional Court have made it less likely for the death penalty to be struck down.²

8. A total of ten bills to abolish the death penalty has been introduced in the 15th to the current 22nd National Assembly since 1999.³ In 2018, members of the National Assembly proposed a resolution supporting South Korea's accession to the Second Optional Protocol

² The Advocates for Human Rights, The World Coalition Against the Death Penalty, and Transitional Justice Working Group, *Stakeholder Report on The Republic of Korea's Compliance with the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, (June 10, 2024), ¶ 7, <https://www.theadvocatesforhumanrights.org/Res/TAHR%20WCADP%20TJWG%20CAT%20final.pdf>; Constitutional Court of Korea, *Constitutional Court of Korea case search results*, accessed Jan. 23, 2025, https://ecourt.court.go.kr/coelec/websquare/websquare.html?w2xPath=/ui/coelec/dta/casesrch/EP4100_M01.xml&eventno=2019%ED%97%8C%EB%B0%9459; Kim Hyungtae, *Death Penalty Q&A: Execution of a Violent Criminal is another murder*, Catholic Times, Nov. 28, 2024, accessed Jan. 23, 2025, <https://www.catholictimes.org/article/20241128500019>.

³ The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 152463, proposed by 90 members including Yoo Jae-geon on 7 December 1999, accessed Jan. 23, 2025, <https://likms.assembly.go.kr/bill/billDetail.do?billId=016007>; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 161085, proposed by 63 members including Chung Dae-chul on 30 October 2001 and supported by 92 others, accessed Jan. 23, 2025, <https://likms.assembly.go.kr/bill/billDetail.do?billId=017199>; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 171129, proposed by 175 members including Yoo Ihn-tae on 9 December 2004, accessed Jan. 23, 2025, <https://likms.assembly.go.kr/bill/billDetail.do?billId=017199>; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 1800928, proposed by 39 members including Park Sun-young on 12 September 2008, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_V0K8H0P9L1U2I1O0R4A9K3S6X2M7O8; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 1806259, proposed by 53 members including Kim Boo-kyum on 8 October 2009, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_G0V9B1C0R0A8Y1S1F1H4F0Z3F6D2N9; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 1809976, proposed by 10 members including Joo Sun-young on 22 November 2010, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_I1U0M1X1C2V2X1M3G3J2E0B5X4N4B1; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 1915958, proposed by 172 members including Yoo Ihn-tae on 6 July 2015, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_K1M5Z0N7F0G6S1T3Z5Q5K1F1J4T3H0; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 2022856, proposed by 75 members including Lee Sang-min on 10 October 2019, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_G1U9L1S0W1C0J1I4P3W7Q1J6R9C9T6; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 2112795, proposed by 30 members including Lee Sang-min on 7 October 2021, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_P2K1H1I0C0B7F0V9D2D4H5N7Z1V2N6; The National Assembly of the Republic of Korea, Special act to abolish the death penalty - Bill no. 2206080, proposed by 65 members including Park Jie-won on 29 November 2024, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_C2B4W0V6U0S3B1C3A4B1Z2H1G2H9G7.

to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.⁴

9. The Government further voted in favor of the biennial resolution for a moratorium on executions at the U.N. General Assembly in 2020, 2022, and 2024.⁵
10. There are some political figures who have publicly expressed support for the death penalty. In 2021, then-presidential candidate Hong Joon-pyo posted on Facebook about a case of rape and infanticide and said that this was the kind of case for which the death penalty would be applied if he were president.⁶
11. As of January 2025, there are 59 persons on death row in South Korea. Of these individuals, two are foreign nationals. Judicial authorities convicted and sentenced to death Park Gyung-soo, a Chinese national of Korean ethnicity, for the robbery and murder of a mother and a daughter and the rape of the latter's friend following a house break-in by the Daegu District Court on 15 December 1999 (case no. 1999 Go-Hap 613), the Daegu High Court on 18 April 2000 (case no. 1999 No 757) and the Supreme Court on 7 July 2000 (case no. 2000 Do 1886). Wang Liwei (왕리웨이 or 王立伟/王立偉), a Chinese national of Han Chinese ethnicity, was convicted and sentenced to death for the serial murder of two women and attempted murder of nine women by the Suwon District Court on 8 December 2000 (case no. 2000 Go-Hap 505), the Seoul High Court on 12 June 2001 (case no. 2000 No 3456) and the Supreme Court on 14 September 2001 (case no. 2001 Do 3706).
12. It is unclear if Mr. Park and Mr. Wang were informed without delay of their right to inform and forward communication to the consular post under Article 36(1)(b) of the Vienna Convention on Consular Relations. It was only on 28 April 2022 that the Supreme Court held in a non-capital offense case against an Indonesian drug trafficker that the arrest or detention of a foreign national in violation of the consular notification obligation under Article 36(1)(b) of the Vienna Convention is unlawful (case no. 2021 Do 17103).
13. The right of foreigners deprived of their liberty to be notified about consular notification and access under Article 36(1)(b) of the Vienna Convention is not stipulated in the Criminal Procedure Code or any other acts of the National Assembly. The relevant provisions can be found in Article 91 (2) and (3) of the Police Investigation Rules (경찰수사규칙), a decree of the Ministry of the Interior and Safety (행정안전부령), which is subsidiary administrative legislation. The Prosecution Service Case Affair Rules (검찰사건사무규칙), a decree of the Ministry of Justice (법무부령), another subsidiary

⁴ The National Assembly of the Republic of Korea, Resolution urging the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights - Bill no. 2015870, proposed by 32 members including Keum Tae-sup on 4 October 2018, accessed Jan. 23, 2025, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Y1J8L1W0U0B4E1W8N0L1P5C1Q0W9N1.

⁵ Press Release, Amnesty International, *Global: UN Member States Move Closer to Rejecting Death Penalty as Lawful Punishment Under International Law* (Dec. 18, 2024), also available online at <https://www.amnestyusa.org/press-releases/global-un-member-states-move-closer-to-rejecting-death-penalty-as-lawful-punishment-under-international-law>; UN General Assembly, *Moratorium on the use of the death penalty*, (Nov. 13, 2024), U.N. Doc. A/C.3/79/L.37/Rev.1.

⁶ Yoon Min-sik, *Death penalty revisited*, The Korea Herald, Jul. 19, 2022, <https://www.koreaherald.com/view.php?ud=20220719000602>.

administrative legislation, which governs the criminal investigations by the state prosecutors does not even have any provisions concerning consular notification and access.

II. Persons expelled, returned (“refouled”), surrendered, extradited or otherwise forcibly transferred to another state or jurisdiction where there are substantial grounds for believing that they would be in danger of being subjected to the death

14. Under various sources of international human rights law, including several UN treaties to which South Korea is a party, the Government is forbidden from refouling any individual who is at risk of being subjected to torture or enforced disappearance.⁷ According to the Human Rights Committee’s interpretation of Article 6 of the International Covenant on Civil and Political Rights, States that have abolished the death penalty are barred from deporting, extraditing, or expelling an individual to a country in which they may face the death penalty unless credible and effective assurances against the imposition of the death penalty have been obtained.⁸ The Human Rights Committee also commented that the obligation not to reintroduce the death penalty for any specific crime requires States parties not to deport, extradite or otherwise transfer an individual to a country in which he or she is expected to stand trial for a capital offence, if the same offence does not carry the death penalty in the removing State, unless credible and effective assurances against exposing the individual to the death penalty have been obtained.⁹
15. The Special Rapporteur on extrajudicial, summary or arbitrary executions has also recommended that States with long-standing moratoriums on the imposition of the death penalty (and as such are considered de facto abolitionist) should consider amending national laws on extradition and deportation in line with this prohibition.¹⁰
16. Despite being a de facto abolitionist state, South Korea does not have any laws on extradition and deportation that prohibit forcible transfer of persons to States or jurisdictions where they face a genuine risk of the death penalty, unless adequate, effective and credible assurances are obtained. Moreover, South Korea has returned individuals to States and jurisdictions that may execute them.
17. In October 2023, the Human Rights Committee in its Concluding Observations recommended South Korea to guarantee the principle of non-refoulement by ensuring that no individuals seeking or in need of international protection are expelled or returned to a country where there is a risk of irreparable harm, such as that set out in Articles 6 and 7 of the Covenant.¹¹ The Human Rights Committee further recommended that South Korea fully respect the principle of non-refoulement by ensuring that the right of asylum-seekers

⁷ UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 3; UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 2010, Art. 16.

⁸ Human Rights Committee, *Judge v. Canada*, (Aug. 13, 2003), U.N. Doc. CCPR/C/78/D/829/1998, ¶ 10.6; Human Rights Committee, *Yin Fong v. Australia*, (Nov. 23, 2009), U.N. Doc. CCPR/C/97/D/1442/2005, ¶ 9.7.

⁹ Human Rights Committee, *General comment No. 36*, (Sept. 3, 2019), U.N. Doc. CCPR/C/GC/36, ¶ 50..

¹⁰ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Application of the death penalty to foreign nationals and the provision of consular assistance by the home State*, (Aug. 20, 2019), U.N. Doc. A/74/318, ¶ 110. .

¹¹ Human Rights Committee, *Concluding Observations on fifth periodic report of the Republic of Korea*, (Nov. 24, 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 38(a).

to lodge asylum applications at ports of entry is effectively guaranteed in practice.¹² As of January 2025, the Government has yet to codify the general principle of non-refoulement in the domestic law.

18. South Korea continues to deport individuals to States that actively implement the death penalty and to States where there are substantial grounds for believing that they would be in danger of being subjected to torture. On 28 April 2022, South Korea deported Jin Yinsu, or “Mr. Kim,” a Chinese national of Korean ethnicity who had fled China after killing a Chinese police officer in November 1993, following his arrest by the South Korean authorities in November 2019 and the dismissal of his administrative lawsuits against the deportation order of 14 May 2020 by the Daejeon District Court on 28 January 2021 (case no. 2020 Gu-Dan 850), the Daejeon High Court on 16 September 2021 (case no. 2021 Nu 10406) and the Supreme Court on 27 January 2022 (case no. 2021 Du 56329).¹³ It is customary for police killers to be executed in China, but the Government did not ask, and China made no guarantee, that the Chinese authorities will not seek the death penalty against him after his deportation to China. Human Rights Watch has observed that South Korea continues to deport individuals to countries that retain the death penalty, including North Korea, China, Japan, and the United States, putting those who are deported at risk of being sentenced to death.¹⁴
19. South Korea’s unequal practices for conditional extradition may also constitute discrimination based on national or ethnic origin. In 2008, South Korea extradited Korean American David Heyon Nam to the U.S. state of Pennsylvania on the condition that the Philadelphia district attorney would not seek the death penalty in his murder trial.¹⁵ Mr. Nam was convicted of second-degree murder and sentenced to life imprisonment without parole.¹⁶
20. South Korea has subsequently deported other foreign nationals without such a guarantee. On 21 March 2012, an Uzbek asylum-seeker was deported for using a fake passport even though it was necessary to flee to South Korea because he was already being targeted by the Uzbek authorities for his wife’s wearing of a hijab.¹⁷ He was reported as missing by his family after repatriation from South Korea to Uzbekistan.

¹² Human Rights Committee, *Concluding Observations on fifth periodic report of the Republic of Korea*, (Nov. 24, 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 46(c).

¹³ Kim Ki-yoon, *The killer of a Chinese Public Security officer from 30 years ago who had laundered his identity repatriated*, Dong-A Ilbo, May 18, 2022, <https://www.donga.com/news/Society/article/all/20220518/113468246/1>.

¹⁴ Human Rights Watch, *Joint Letter: South Korea’s Abolition of the Death Penalty*, Mar. 27, 2023, accessed Jan. 23, 2025, <https://www.hrw.org/news/2023/03/27/joint-letter-south-koreas-abolition-death-penalty>.

¹⁵ Taipei Times, *Murder suspect extradited from S Korea*, Sept. 18, 2008, accessed Jan. 23, 2025, <https://www.taipetimes.com/News/world/archives/2008/09/18/2003423506>.

¹⁶ Julie Shaw, *He gets life in prison for slaying ‘little old man’*, Philadelphia Inquirer, Feb. 20, 2010, accessed Jan. 24, 2025, https://www.inquirer.com/philly/hp/news_update/20100220_He_gets_life_in_prison_for_slaying_little_old_man_.html.

¹⁷ Ji-Heon Kim, *정부, 난민신청 우즈베크인 강제송환 논란 (Controversy over government’s forcible repatriation of Uzbek who had applied for asylum)*, Yonhap News, Apr. 3, 2012, accessed Jan. 24, 2025, <https://www.yna.co.kr/view/AKR20120402109200004>.

21. On 26 November 2024, the South Korean police announced that an Uzbek national on Interpol's wanted persons list for an assassination attempt on a former presidential aide in Uzbekistan on 26 October 2024, was arrested three days earlier on 23 November and has since been deported to Uzbekistan. It is questionable that the deported Uzbek national, who had fled to South Korea on a tourist visa, had an opportunity to challenge the deportation order in court in less than three days following his arrest or if any conditions concerning the death penalty were attached to the deportation.¹⁸

III. Escapees from North Korea (Democratic People's Republic of Korea)

22. South Korea does not recognize North Korea (Democratic People's Republic of Korea) and in principle treats all escapees from North Korea who express the willingness to be protected by South Korea as South Korean citizens. By September 2024, a total of 34,259 escapees (9,564 men and 24,695 women) have come to South Korea according to the South Korean government's official statistics.¹⁹ The vast majority of the escapees first escape to China before finding their way to South Korea, but about a hundred have escaped directly from North to South Korea by sea or land which is one of the most militarized frontiers in the world.
23. On 7 November 2019, the Government deported two defectors from North Korea suspected of committing a mutiny and murder of 16 crew members aboard a fishing vessel before their defection on 2 November. The Government claimed that deportation was justified since they were "grotesque criminals" and not "sincere" defectors.²⁰
24. On 28 January 2020, the UN Special Rapporteur on the situation of human rights in the DPRK, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint allegation letter to South Korea stating that they "are deeply concerned about the decision made by [the South Korean] Government of repatriating both individuals to the Democratic People's Republic of Korea where citizens often face serious human rights violations upon return according to our well-documented cases, including enforced disappearance, arbitrary execution, torture and ill-treatment, and trials that do not conform to international standards for fairness".²¹ Human Rights Watch also pointed out that South Korea refouled

¹⁸ Kim Hyun-soo, *S. Korea extradites suspect in assassination attempt on Uzbek official*, Yonhap News, Nov. 26, 2024, accessed Jan. 24, 2025, <https://en.yna.co.kr/view/AEN20241126008400315>; Lee Dong-hwan, *Suspect in Uzbek politician assassination attempt caught and deported from Korea*, Yonhap News, Nov. 26, 2024, accessed Jan. 24, 2025, <https://www.yna.co.kr/view/AKR20241126107600004>; Chae, Mine-seok, *Interpol Red Notice suspect wanted for assassination attempt of high-ranking Uzbek politician arrested in Korea*, Seoul Economic Daily, Nov. 26, 2024, accessed Jan. 24, 2025, <https://www.sedaily.com/NewsView/2DGZUEVR6C>.

¹⁹ Ha Chae-rim, *181 North Korean defectors entered the country by the third quarter of this year... 'Most are staying in third countries for a long period of time'*, Yonhap News, Oct. 22, 2024, accessed Jan. 24, 2025, <https://www.yna.co.kr/view/AKR20241022072200504>.

²⁰ Hyonhee Shin, *South Korea forcibly deported only two of 200 North Korean fishermen since 2010, ministry says*, Reuters, July 15, 2022, accessed Jan. 24, 2025, <https://www.reuters.com/world/asia-pacific/skorea-forcibly-deported-only-two-200-nkorean-fishermen-since-2010-ministry-2022-07-15>.

²¹ Mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or

the defectors before sufficiently investigating their claims and did so without regard to the probability the defectors would be tortured or killed in North Korea.²²

25. Under the South Korean law, escapees from North Korea who express the willingness to be protected by South Korea should in theory be treated as South Korean citizens, but these escapees are in practice subjected to discriminatory treatment because of their national origin in North Korea. For instance, it would have been unthinkable for the South Korean government to consider deporting South Korean citizens of national origin in South Korea to North Korea even if they were accused of murder or other heinous crimes.
26. The escapees are also denied due process rights in a manner inconceivable for the native South Koreans because of their national origin. After first arriving in South Korea, the escapees can be “protected” by the National Intelligence Service (NIS) for up to 90 days for interrogation and this “provisional protection” period can be further extended. The Government claims that the escapees are not detained against their will, but the various resettlement support for the escapees is conditional on going through this process. Therefore, the escapees are deprived of their liberty during this de facto detention. The Government also uses the information collected from the interrogation of the escapees under the “provisional protection” for criminal cases, including espionage charges, against them notwithstanding its position that the interrogation is not a part of the criminal procedure.
27. It is of particular concern that the escapees under the “provisional protection” do not enjoy: (1) the right not to be subjected to refoulement, (2) the right to be brought promptly before a judge, (3) the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful, (4) the right to legal counsel and (5) the procedural right to appeal the decisions on protection or forcible repatriation. As the repatriation of the two escapees on 7 November 2019 makes clear, the Government can even dispense with the entire procedure and return the escapees.
28. In October 2023, the Human Rights Committee stated in its Concluding Observations that it was “troubled by reports that persons from the Democratic People’s Republic of Korea who have been denied protection status, as occurred in November 2019, have been returned to the Democratic People’s Republic of Korea despite the risk of being subjected to serious human rights violations, in contravention of the principle of non-refoulement”.²³ The Committee also expressed “its concern about the detention of escapees upon arrival, about exceptions provided for in the decree on enforcing the North Korean Defectors Protection

arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Information received concerning the announcement made by the Government of the Republic of Korea on 7 November 2019*, AL KOR 3/2019, (Jan. 28, 2020), 1, accessed Jan. 24, 2025, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24975>.

²² Human Rights Watch, *South Korea Deports Two From North to Likely Abuse: Rapid Return Disregards International Prohibition Against Torture*, Nov. 12, 2019, accessed Jan. 24, 2025, <https://www.hrw.org/news/2019/11/12/south-korea-deports-two-north-likely-abuse>.

²³ Human Rights Committee, *Concluding Observations on fifth periodic report of the Republic of Korea*, (Nov. 24, 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 37.

and Settlement Support Act that allow for detention beyond the maximum of 90 days, and that the right to independent legal counsel is not guaranteed”.²⁴

29. The Human Rights Committee also took note of South Korea’s assurance that escapees from North Korea who are denied protection under the North Korean Defectors Protection and Settlement Support Act are able to lodge an appeal against their forcible return under the Immigration Act, with suspensive effect.²⁵ However, we know of no instance when the escapees were able to lodge such an appeal against their forcible return. The two escapees repatriated on 7 November 2019 were not even informed about their repatriation until they were blindfolded and escorted by the police special operation unit to the inter-Korean checkpoint and handed over to the North Korean authorities. South Korea should clarify how many and when such appeals were lodged and their outcomes.
30. The Human Rights Committee recommended that South Korea: “(a) Guarantee the principle of non-refoulement by ensuring that no individuals seeking or in need of international protection, including escapees from the Democratic People’s Republic of Korea, are expelled or returned to a country where there is a risk of irreparable harm, such as that set out in Articles 6 and 7 of the Covenant; (b) Codify in law the procedures and safeguards concerning escapees from the Democratic People’s Republic of Korea, including with regard to interrogation and detention, the right to legal counsel, the duration and judicial review of administrative detention and the right to appeal any decision to a judicial body – including decisions on deportation or rejection of protection – and ensure that escapees have effective access to such safeguards in practice; (c) Ensure that escapees are detained for the shortest possible period”.²⁶
31. As of January 2025, the Government has yet to codify the principle of non-refoulement, the procedures and safeguards concerning the escapees and the shortest possible period of detention for the escapees.
32. In July 2024, the Committee against Torture in its Concluding Observations expressed its concern that the law includes exceptions providing for extending the 90-day “provisional protection” period and that the escapees’ right to legal counsel is not guaranteed.²⁷ The Committee against Torture also noted that “there was a case of refoulement during the period under review” despite South Korea’s assurances that it will prevent deportations of the escapees.²⁸
33. The Committee against Torture recommended that South Korea: “(a) Ensure that the deprivation of liberty of persons escaping the Democratic People’s Republic of Korea is for the shortest possible period and never exceeds the established legal maximum; (b) Guarantee that all fundamental legal safeguards, including the rights to legal counsel,

²⁴ Human Rights Committee, *Concluding Observations on fifth periodic report of the Republic of Korea*, (Nov. 24, 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 37.

²⁵ Human Rights Committee, *Concluding Observations on fifth periodic report of the Republic of Korea*, (Nov. 24, 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 37.

²⁶ Human Rights Committee, *Concluding Observations on fifth periodic report of the Republic of Korea*, (Nov. 24, 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 38.

²⁷ Committee Against Torture, *Concluding observations on the sixth periodic report of the Republic of Korea*, (Aug. 16, 2024), U.N. Doc. CAT/C/KOR/CO/6, ¶ 30.

²⁸ Committee Against Torture, *Concluding observations on the sixth periodic report of the Republic of Korea*, (Aug. 16, 2024), U.N. Doc. CAT/C/KOR/CO/6, ¶ 30.

medical care and an effective independent review, for all persons escaping the Democratic People’s Republic of Korea and ensure they have access to these safeguards in practice; (c) Uphold the principle of non-refoulement for all persons escaping the Democratic People’s Republic of Korea, guaranteeing that they are not expelled, returned or extradited to a country where there are substantial grounds for believing that they would be in danger of being subjected to torture, in line with Article 3 of the Convention, regardless of whether the person is suspected of having committed criminal acts or has expressed a wish to defect that is deemed genuine”.²⁹

34. As of January 2025, the Government has yet to codify the shortest possible period of deprivation of liberty, all fundamental legal safeguards, including the rights to legal counsel and an effective independent review and the principle of non-refoulement for the escapees.

IV. Refugees and asylum-seekers

35. There is ample evidence of discrimination against asylum-seekers based on their national origin. According to the Ministry of Justice’s annual publication, as of 2023, there have been a total of 103,759 refugee applicants and the top five nationalities are: Russia (13,711 or 13.2 percent), Kazakhstan (11,731 or 11.3 percent), China (9,506 or 9.2 percent), Pakistan (7,438 or 7.2 percent) and India (6,391 or 6.2 percent).³⁰ Among the 1,439 recognized as refugees by 2023, however, the top five nationalities are: Myanmar (450 or 31.3 percent), Ethiopia (161 or 11.2 percent), Bangladesh (123 or 8.5 percent), Egypt (115 or 8.0 percent) and Pakistan (105 or 7.3 percent).³¹ Among the 2,613 granted the “humanitarian status” by 2023, the top five nationalities are: Syria (1,263 or 48.3 percent), Yemen (794 or 30.4 percent), Haiti (77 or 2.9 percent), Myanmar (55 or 2.1 percent) and Egypt (39 or 1.5 percent).
36. The publication lists only the top five nationalities for each. It also does not provide the information disaggregated by ethnic origin even though there may be discriminatory treatment of individuals of different ethnicities from the same country.
37. The Government has been reluctant to grant the refugee status to the asylum-seekers from countries like China and Russia. On 21 December 2018, Tu Airong, a Chinese asylum seeker who had been persecuted by China for aiding the flight of about 500 refugees from North to South Korea in China and Laos became only the second Chinese national to be

²⁹ Committee Against Torture, *Concluding observations on the sixth periodic report of the Republic of Korea*, (Aug. 16, 2024), U.N. Doc. CAT/C/KOR/CO/6, ¶ 31.

³⁰ Ministry of Justice of the Republic of Korea, *2023 Immigration and Foreigner Policy Statistical Yearbook*, 102–103, accessed Jan. 24, 2025, <https://www.immigration.go.kr/immigration/1570/subview.do?enc=Zm5jdDF8QEB8JTJGYmJzJTJGaW1taWdyYXRpb24lMkYyMjglMkY1ODQ3NDYlMkZhcncRjbfZpZXcuZG8lM0ZwYXNzd29yZCUzRCUyNnJnc0JnbmRIU3RyJTNEJTI2YmJzQ2xTZXEIM0QIMjZyZ3NFbmkZVN0ciUzRCUyNmlzVmlld01pbmUIM0RmYWxzZSUyNnBhZ2UIM0QxJTI2YmJzT3BibldyZFNlcSUzRCUyNnNyY2hDb2x1bW4lM0QIMjZzcmNoV3JkJTNEJTI2>.

³¹ Ministry of Justice of the Republic of Korea, *2023 Immigration and Foreigner Policy Statistical Yearbook*, 105–106, accessed Jan. 24, 2025, <https://www.immigration.go.kr/immigration/1570/subview.do?enc=Zm5jdDF8QEB8JTJGYmJzJTJGaW1taWdyYXRpb24lMkYyMjglMkY1ODQ3NDYlMkZhcncRjbfZpZXcuZG8lM0ZwYXNzd29yZCUzRCUyNnJnc0JnbmRIU3RyJTNEJTI2YmJzQ2xTZXEIM0QIMjZyZ3NFbmkZVN0ciUzRCUyNmlzVmlld01pbmUIM0RmYWxzZSUyNnBhZ2UIM0QxJTI2YmJzT3BibldyZFNlcSUzRCUyNnNyY2hDb2x1bW4lM0QIMjZzcmNoV3JkJTNEJTI2>.

recognized as a refugee in South Korea.³² The immigration authorities initially dismissed his asylum claim and appealed all the way up to the Supreme Court, which ordered them to grant him the refugee status. On 22 May 2024, the Seoul Administrative Court for the first time ruled in favor of a Russian anti-war activist who sought asylum in South Korea after his asylum claim was rejected by the immigration authorities (case no. 2023 Gu-Dan 72397).³³

38. According to the Ministry of Justice's Refugee Policy Division's response on 29 January 2024 to the freedom of information request filed by Nancen Refugee Rights Center, Of the 18,838 asylum claims filed in 2023, decisions were made on 5,950 cases of which only 101 were recognized as refugees and 129 granted the "humanitarian status".³⁴ The refugee recognition rate and protection rate are extremely low compared to other countries. Interestingly, the Government also maintains that it cannot disclose the figures for countries of origin with less than 100 applicants because doing so may reveal the applicants' identities.
39. Under Article 6 of the Refugee Act, the Ministry of Justice (MOJ)/immigration offices have full discretion about whether to refer the refugee status applications submitted at the ports of entry to the formal refugee status determination process.³⁵ Those whose applications the immigration officials decide not to refer to the refugee status determination process can be deported under the Immigration Act without access to legal counsel or judicial review. A port of entry refugee applicant technically does not fall under "a refugee, humanitarian sojourner, nor refugee applicant" who is protected from refoulement under Article 3 of the Refugee Act because the definition of "a refugee applicant" under Article 2(4) excludes a port of entry refugee applicant. The port of entry refugee applicants, mostly at Incheon International Airport, can also be subjected to prolonged administrative detention at make-shift facilities.
40. The immigration authorities have used their discretion to deport the port of entry refugee applicants before the refugee lawyers could meet with them: On 23 May 2018, the Incheon Airport Immigration Office repatriated a Chinese Uyghur asylum-seeker to Turkey on the same day that it decided not to refer the case to the refugee status determination process despite strong protests from the refugee lawyers; on 31 May 2018 an Egyptian sought asylum at Incheon Airport, but the authorities informed him of the decision not to make a referral to the refugee status determination process on 29 June and, despite immediately

³² Jonathan Cheng, *He Helped North Koreans Reach Freedom. Now He Wants South Korea's Protection*, Wall Street Journal, Dec.19, 2018, accessed Jan. 24, 2025, <https://www.wsj.com/articles/he-helped-north-koreans-now-he-seeks-seouls-aid-11545175562>.

³³ Seoul Administrative Court, *Ruling recognizes a Russian national who entered South Korea to avoid conscription while opposing the Russian-Ukrainian war as a refugee (2023Gudan72397)*, May 29, 2024, accessed Jan. 24, 2025, <https://sladmin.scourt.go.kr/dcboard/new/DcNewsViewAction.work?seqnum=82&gubun=182>.

³⁴ Nancen Refugee Rights Center, *Current situation of refugees in the country (as of December 31, 2023)*, Mar. 8, 2024, accessed Jan. 24, 2025, <https://nancen.org/2397>.

³⁵ Ministry of Justice of the Republic of Korea (Refugee Division), REFUGEE ACT [Enforcement Date 20. Dec, 2016.] [Act No.14408, 20. Dec, 2016., Partial Amendment], accessed Jan. 24, 2025, <https://www.law.go.kr/lsInfoP.do?lsiSeq=188376&viewCls=engLsInfoR>.

arranging to meet with the refugee lawyers on 4 July, he was deported even before the meeting could take place.³⁶

41. The Refugee Act should be amended to ensure access to legal counsel, judicial review and referral to the formal screening process for port of entry refugee applicants and to extend the non-refoulement protection to them. The authorities should also disclose annually (1) the number of foreigners who have applied for the refugee status at ports of entry; (2) the number of those who have been referred to the refugee status screening; (3) the number of those who have been deported after the authorities decided against their referral to the refugee status screening; (4) the number of those who have been granted the humanitarian stay status after the authorities decided against their referral to the refugee status screening (disaggregated by nationality and port of entry).
42. The Ministry of Justice (MOJ)'s internal review body created under the Refugee Act to hear administrative appeals against the decisions made by the immigration officials, the Refugee Committee [난민위원회], includes the National Intelligence Service (NIS)'s head of counterintelligence corps, in accordance with Article 2(2)(3) of the detailed operational rules for the Refugee Committee (Ordinance of the Ministry of Justice no. 1378, last revised on 25 August 2021),³⁷ whose risk assessment about the refugee applicant's country of origin plays a decisive role in practice. The formal role of intelligence officers in the refugee status determination is difficult to understand or justify and other government offices, like the Ministry of Foreign Affairs (MOFA), should collect and share information about the countries of origin and publish the country-specific assessment to provide objective guidelines and to strengthen transparency in the refugee determination process.
43. It is also a matter of concern that Chinese Government agents have been allowed to set up "secret police stations" in South Korea with impunity to surveil ethnic Uyghurs and practitioners of Falun Gong.³⁸ A Uyghur student who attended a human rights discussion received threatening WeChat messages from a person who claimed to be a Chinese Public Security agent and another Uyghur student was visited by Chinese agents at home in blatant examples of transnational repression while the South Korean police failed to protect them; the former fled to a third country while the latter applied for the refugee status which was rejected by the Ministry of Justice (MOJ) but eventually granted by court.³⁹
44. In May 2023, Abuduwaili Abudurehman, a Uyghur student studying in Seoul, reportedly disappeared in Hong Kong Airport for three weeks before reappearing and claiming that he had never left South Korea during the time in question after Amnesty International went

³⁶ Nancen Refugee Rights Center, *Case of Violation of the Right to Consult a Lawyer for Refugee Applicants at the Port of Entry (2018)*, Jan. 18, 2019, accessed Jan. 24, 2025, <https://nancen.org/1854>.

³⁷ The original Korean version (난민위원회 운영세칙 [시행 2021. 8. 25.] [법무부훈령 제 1378 호, 2021. 8. 25., 일부개정]) is available at <https://www.law.go.kr/admRulLsInfoP.do?chrClsCd=&admRulSeq=2100000203989>.

³⁸ Press Release, Advocates for Public Interest Law (APIL), *The Chinese government's religious persecution and harassment of overseas refugees (Uyghurs, the Church of Almighty God, Falun Gong, etc.) comes under criticism*, (June 21, 2019), <https://apil.or.kr/press-releases/12293>.

³⁹ Moon Jae-yeon, *Surveillance by Chinese Public Security after coming to South Korea; Uyghurs suffering from secret police*, Hankook Ilbo, Feb. 27, 2023, accessed Jan. 24, 2025, <https://www.hankookilbo.com/News/Read/A2023022323250003687>.

public with his disappearance.⁴⁰ Amnesty International which first raised the issue deleted its initial presser without explanation and the Hong Kong authorities demanded Amnesty International to apologize for making a false accusation which it refused to do.⁴¹

45. After Mr Abuduwaili's disappearance became public, the South Korean media and members of the National Assembly asked the Ministry of Justice (MOJ) to confirm whether he had indeed left South Korea during the time of his reported disappearance, but the MOJ authorities refused on privacy grounds before his sudden resurfacing. While it is fortunate that Mr. Abuduwaili reappeared in Seoul, the absence of any investigation or fact-finding about his reported disappearance exposes him and other Uyghurs residing in South Korea to the risk of torture, ill-treatment, and other human rights violations.
46. It would be helpful therefore for the authorities to clarify whether Mr Abuduwaili had ever left South Korea in the month of May 2023 and whether he is still residing in safety in South Korea. Incidentally, in September 2009, the Government detained for 42 hours at Incheon Airport Dolkun Isa, then-Secretary General and now-President of the World Uyghur Congress, who was planning to attend the World Forum for Democratization in Asia in Seoul.⁴² It is fortunate that Mr. Dolkun was not deported to China as has happened to numerous Uyghur activists in other countries.
47. In November 2021, the Ministry of Justice (MOJ) acknowledged human rights violations of a Moroccan man at a detention center for undocumented foreigners who had his four limbs tied behind his back in what is known as a "shrimp's posture" and had been put in solitary confinement.⁴³ One local human rights organization highlighted this incident as evidence that "nothing has been changed" with regard to the treatment of immigrants in South Korea since a 2007 incident where ten immigrants died in a fire after officers refused to open the detention center doors for fear the immigrants would escape.⁴⁴ On 9 May 2024, the Seoul Central District Court ordered the Government to pay a solatium of 10 million won (app. 7,200 USD) to the Moroccan detainee for the solitary confinement and "shrimp's posture" (case no. 2022 Ga-Hap 5379759). Although the Moroccan man was not seeking asylum in South Korea, asylum-seekers could face similar treatment at a detention center for undocumented foreigners.

V. Suggested questions for the Government of South Korea

48. The coauthors suggest that the Committee pose the following questions to the Government of South Korea:

⁴⁰ Joel Guinto, *Abuduwaili Abudureheman: Hong Kong denies detaining Uyghur student*, BBC, May 29, 2023, accessed Jan. 24, 2025, <https://www.bbc.com/news/world-asia-china-65743731>.

⁴¹ Hannah Ritchie, *Uyghur student not missing in Hong Kong - Amnesty*, BBC, May 31, 2023, accessed Jan. 24, 2025, <https://www.bbc.com/news/world-asia-china-65751232>.

⁴² Press Release, Amnesty International, *South Korea: Dolkun Isa release welcome but authorities should not have denied him entry*, (Sept. 18, 2009), <https://www.amnesty.org/en/latest/press-release/2009/09/south-korea-dolkun-isa-release-welcome-authorities-should-not-have-denie>.

⁴³ The Korea Times, *Gov't acknowledges rights violation at detention center for undocumented immigrants*, Nov. 1, 2021, accessed Jan. 24, 2025, https://www.koreatimes.co.kr/www/nation/2024/04/113_318026.html.

⁴⁴ Nancen Refugee Rights Center, *Joint statement on the 15th anniversary of Yeosu Detention Center fire tragedy*, Mar. 16, 2022, accessed Jan. 24, 2025, <https://nancen.org/2238>.

- Were the two foreign nationals currently on the death row, Park Gyung-soo and Wang Liwei, notified about consular notification and access at the time of their arrest and detention?
- Describe any steps the Government has taken to codify the right of foreign nationals deprived of their liberty to be notified about consular notification and access under Article 36(1)(b) of the Vienna Convention in (1) an act of the National Assembly and/or (2) the Prosecution Service Case Affair Rules (검찰사건사무규칙).
- Provide an update on the efforts to implement the recommendations from paragraph 38 of the Human Rights Committee's Concluding Observations in October 2023 and paragraphs 31 and 33 of the Committee Against Torture's Concluding Observations in August 2024.
- Provide an update on South Korea's compliance with its non-refoulement obligations.
- Provide comprehensive data on people under sentence of death, disaggregated by age, age of any dependent children, sex, gender, nationality, ethnic group, disability, crime(s) of conviction, date of conviction, and relationship to the victim and any codefendants.
- Provide comprehensive data on pending and completed extraditions and deportations of accused and convicted criminals, disaggregated by nationality, gender, age, crime(s) at issue, whether or not the person has been convicted, the date of extradition or deportation (if applicable), the destination State or jurisdiction, the imposition and application of the death penalty on the transferred person, status of extradition agreement (if applicable), and whether any extradition agreement was conditional or unconditional.
- What criteria does the Government apply to decisions regarding conditional extraditions and/or deportations and how does the Government ensure that the criteria are applied in a non-discriminatory way? Does South Korea have law or policy on extradition and deportation that prohibit forcible transfer of persons to States or jurisdictions where they face a genuine risk of the death penalty, unless adequate, effective and credible assurances are obtained?
- Why was Korean American David Heyon Nam extradited to the United States on the condition that the death penalty would not be sought in his murder trial in 2008? Does the Government have a policy of seeking such conditions for extradition or deportation in all capital offense cases?
- What steps, if any, has the Government taken to revise Article 5 of the enforcement decree of the Refugee Act with a view to removing the grounds for non-referral to asylum procedures?
- Provide an update on the efforts to guarantee for the escapees from North Korea: (1) the right not to be subjected to refoulement, (2) the right to be brought promptly before a judge, (3) the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their

release if the detention is not lawful, (4) the right to legal counsel and (5) the procedural right to appeal the decisions on protection or forcible repatriation.

- Describe the protocols in place to guarantee all fundamental legal safeguards, including the rights to legal counsel, medical care and an effective independent review, for all persons escaping the Democratic People’s Republic of Korea and ensure they have access to these safeguards in practice.
- Report on instances where the escapees from North Korea who were denied protection under the North Korean Defectors Protection and Settlement Support Act were able to lodge an appeal against their forcible return.
- Explain the safeguards and remedies available for the escapees from North Korea if the Government decides to return them without referring them to the protection process under the North Korean Defectors Protection and Settlement Support Act as was the case for the two escapees forcibly returned to North Korea in just five days on 7 November 2019.
- Provide the refugee recognition rate and protection rate by nationality.
- Collect and publish the information, including the refugee recognition rate and protection rate, disaggregated by major ethnic groups within particular countries of concern.
- Explain why the Government considers that the figures for countries of origin with less than 100 refugee applicants cannot be disclosed because the identity of the applicants may be revealed.